

COMMONWEALTH OF VIRGINIA
Department of Conservation and Recreation
Grant Agreement
Water Quality Improvement Fund
WQIA-2007-##

This Grant Agreement (hereinafter referenced as "Agreement") is made, by and between the Commonwealth of Virginia, Department of Conservation and Recreation, hereinafter called "DCR," and [REDACTED], hereinafter called the "Grantee."

Pursuant to the Virginia Water Quality Improvement Act of 1997, the Virginia General Assembly created the Water Quality Improvement Fund to provide funding for point and nonpoint source water quality improvements throughout the Commonwealth. This Agreement is a sub-grant award, from DCR to the Grantee, of said state grant funds. The parties to this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

(1) GENERAL PROVISIONS: Grantee shall carry out the project as set forth in the Agreement documents. The Agreement documents shall consist of this signed Grant Agreement and:

- (1) Attachment A - Scope of Work
- (2) Attachment B - Project Financial Report Form
- (3) Attachment C - Milestone Table
- (4) Attachment D - NPS Pollution Tracking Data Form for BMPs
- (5) Attachment E – Commonwealth of Virginia, Terms and Conditions

Nothing in this Agreement shall be construed as authority for either party to make commitments that will bind the other party beyond the Scope of Service, contained herein. Furthermore, the Grantee shall not assign, sublet or subcontract any work related to this Agreement, or any interest it may have herein, to any parties not approved by DCR, as noted in these Agreement documents. The details and schedule of service set forth in the Scope of Work and Milestone Table are deemed to have been consensual upon the execution of this Agreement.

(2) TIME OF PERFORMANCE: Upon signature by the Grantee and the director of DCR, the services of the Grantee shall be for the period from, Month 00, 0000 through Month 00, 0000, unless otherwise altered through provisions of this Agreement or extended by written authorization of DCR. All time limits stated are essential to this Agreement. Every effort must be made to complete the work on time. All project expenses and match funds must be completed during the time of performance.

(3) COMPENSATION: The total grant award from DCR is \$. DCR shall release the grant award to the Grantee on a cost-reimbursement basis upon receipt and approval of the Grantee's quarterly reports, as required by this Agreement, or at other times agreed to by DCR. DCR is under no obligation to reimburse work performed prior to the commencement or after the expiration of the contracted time of performance. DCR reserves the right to withhold a minimum of 15% of the Grantee's total grant allocation until the final grant report and all services, reports and deliverables are received and approved by DCR. Acceptance of work completed under this Agreement shall be decided at the sole discretion of DCR and shall be final.

The Grantee shall spend the funds according to the specified categories of the Agreement budget. Minor shifts of the funds among categories by the Grantee, not to exceed 10% of any budget line item are permissible. Shifts in funds exceeding 10% of budget line items must be approved in writing by DCR. Any cost overruns incurred by the Grantee during the time of performance shall be the responsibility of the Grantee.

(4) **MATCHING FUNDS:** If this Agreement is contingent upon cash and in-kind contributions by the Grantee to the project, the required amount of matching funds will be indicated on the Project Financial Report Form, Attachment B, of these agreement documents. Matching contributions, if applicable, must reflect expenses directly related to the implementation of this project and incurred only during the time of performance listed in this Agreement. The decision of DCR with respect to approval of matching funds shall be final. Matching funds must be tracked and reported to DCR in the quarterly and final reports described below, both in narrative summary and on Attachment B.

(5) **SCOPE OF SERVICE:** The Grantee shall provide the services to DCR set forth in the Agreement documents and, specifically, as defined in the Scope of Work. All deliverables shall conform to accepted standards and practices. The Grantee shall provide DCR with quarterly reports and a final report, in narrative and financial report form, detailing the progress of work set forth in the Agreement documents. Incomplete or inaccurate reports may result in reimbursement delays. These reports shall be certified by an authorized agent of the Grantee as being true and accurate to the best of the Grantee's knowledge, as indicated by their signature on Attachment B. Each *quarterly report*, due on the 15th of the following month, shall contain the following:

- (1) **A narrative** – Describe the progress in fulfilling the Scope of Work and activities for each deliverable listed in the Milestone Table. Provide both accomplishments and challenges, and a financial narrative with itemized details of expenditures.
- (2) **An updated Project Financial Report Form (Attachment B)** - On Attachment B, summarize expenses incurred in the columns under “DCR Funds” and Grantee contributions under “Match Funds.” This form also serves as the reimbursement request, or invoice, for the Grantee, therefore, only copies with the original authorized signature will be accepted by DCR.
- (3) **An updated Milestone Table (Attachment C)** – Enter “Actual Completion Date” for specific tasks on the table and provide relevant notes.
- (4) **NPS Pollution Tracking Data Form for BMPs (Attachment D)** – Enter data for best management practices installed and completed, if applicable.

The *final report*, due 45 days after the Agreement terminates, shall summarize all major project accomplishments and challenges, as well as expenditures and matching contributions during the period after the project began through the termination date. Photographs taken before, during and after project implementation should be included in the final report. The final reimbursement request must be submitted with the final report.

(6) **ASSISTANCE:** DCR agrees, upon request of the Grantee, to furnish, or otherwise make available to the Grantee, copies of existing non-proprietary materials in the possession of DCR that are reasonably associated with this project. This includes materials that are necessary to the Grantee for completion of its performance under this agreement.

(7) FINANCIAL RECORDS AVAILABILITY: The Grantee agrees to retain all books, records and other documents relative to this agreement for five years after final payment. DCR, its authorized agents, and/or state auditors shall have full access to, and the right to examine any of, said materials during said period.

(8) CREATION OF INTELLECTUAL PROPERTY: All intellectual property including copyrightable material created pursuant to this contract shall be considered work made for hire and shall belong exclusively to the Commonwealth of Virginia. Neither party intends any copyrightable material created pursuant to this contract, together with any other copyrightable material with which it may be combined or used, to be a "joint work" under the copyright laws. If any copyrightable material created pursuant to this contract cannot be deemed work made for hire or is deemed part of a joint work, the Grantee does hereby irrevocably assign its entire copyright interest in such material or work to the Commonwealth of Virginia and shall execute and deliver such further documents as the Commonwealth may reasonably request for the purpose of acknowledging or implementing such assignment. DCR hereby grants to the Grantee a license to use the materials, so owned, for public, not-for-profit purpose within the territory of the Commonwealth.

A copyright notice shall be placed in an appropriate location on any copyrightable material being distributed or published. Such notice shall include (1) either the symbol "©", the word "Copyright" or the abbreviation "Copr." (2) the year of first publication, and (3) the name of the copyright owner (the Commonwealth of Virginia). This information shall be followed by the words, "all rights reserved."

(9) DOCUMENTS: The Grantee may retain any reports, studies, photographs, negatives or other documents prepared in the performance of their obligations under this Agreement and not required to be delivered to DCR. DCR shall have certain rights to use any such materials as specified above. Where necessary for DCR's enjoyment of its rights and other rights referenced in this Agreement, the Grantee shall provide a clear, reproducible copy of such materials (machine readable upon request, if readily available to the Grantee in such form) to DCR.

(10) TERMINATION AND BREACH: Either party may terminate this agreement upon thirty days written notice to the other party. DCR may terminate this Agreement for any reason necessary to support its current policy and financial status, including the need to redirect funds to another program. It is understood and agreed between the parties, herein, that DCR shall be bound, hereunder, only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement.

In the event of breach by the Grantee of this Agreement, DCR shall provide written notice to the Grantee specifying the manner in which the Agreement has been breached. If a notice of breach is given and the Grantee has not substantially corrected the breach within 60 days of receipt of the written notice, DCR shall have the right to terminate the Agreement. The grantee shall not be paid for services rendered nor expenses incurred after receipt of the notice of termination, except such fees and expenses incurred prior to the effective date of termination as are necessary for curtailment of its work under this Agreement.

(11) QUALITY ASSURANCE/QUALITY CONTROL PROJECT PLANS: Within 60 days of the effective date of this Agreement and if required in Attachment A of this Agreement, the Grantee will submit to DCR, for review and approval, a Quality Assurance/Quality Control Project Plan. No water quality monitoring activities shall be initiated until the Quality Assurance/Quality Control Project Plan has been approved by DCR. The Grantee shall implement the approved Quality Assurance/Quality Control Project Plan in performing environmental monitoring activities.

(12) REPORTING AND TRACKING INFORMATION MANAGEMENT SYSTEMS: In accepting these funds, the Grantee agrees to the sharing of all deliverables and related information through state and/or federal channels (including Internet use) and, wherever possible, to provide DCR with deliverables in a format that can be made available to the public.

(13) OPERATION AND MAINTENANCE: Before the end of the first quarterly reporting period or other date as agreed to by DCR, the Grantee will submit to DCR, for review and approval, an Operation and Maintenance Plan for BMPs and other on-the-ground implementation aspects of this project. The Grantee will operate and maintain the project, or secure the operation and maintenance of the project through landowner agreements, in a manner consistent with the plan as approved by DCR. Adherence to Cost-Share Guidelines and BMP specifications is considered an adequate Operation and Maintenance Plan. In the event that the Grantee fails to comply with the operation and maintenance requirements, DCR shall give written notice specifying the failure to comply and shall give the Grantee the time to correct such failure as provided for herein with respect to a breach of this Agreement.

(14) ENFORCEMENT: For nonpoint source Best Management Practice installations funded through this Agreement, within ninety (90) days of receipt of written demand from DCR, the Grantee shall repay an amount, on a straight line pro-rated basis, of the WQIA funds used for the installation, for noncompliance with Section (13) OPERATION AND MAINTENANCE, unless the Grantee asserts a defense afforded it under this Agreement. Enforcement action for BMPs funded through the Cost-Share Program will be in accordance to the Cost-Share Guidelines.

Within sixty (60) days of receipt of written demand from DCR, the Grantee shall pay a stipulated penalty in the amount of \$1,000 or 15%, whichever is greater, of the total award for any of the conditions as set forth in this Agreement, including failure to meet the final deadline or noncompliance with the Scope of Services, Attachment A, unless the Grantee asserts a defense afforded it under this Agreement.

Repayments and stipulated penalties will be paid into the State Treasury and credited to the Fund. The Grantee's right to collect repayments and stipulated penalties does not affect in any way DCR's right to secure specific performance of the Agreement using such other legal remedies as may otherwise be available.

(15) INTEGRATION AND MODIFICATION: The *Virginia Water Quality Improvement Fund (WQIF) Guidelines for FY2006*; and the *WQIF Request for Grant Applications, Application Form with supporting documents* agreed to by the Grantee and DCR are hereby incorporated into this grant agreement by reference. To the extent there are inconsistencies between the grant agreement and the Application Form and its supporting documents, this agreement and its Attachment A shall control. This agreement constitutes the entire Agreement between DCR and

the Grantee. No alteration, amendment, or modifications in the provisions of this Agreement shall be effective unless it is reduced to writing and agreed to by the parties and attached hereto.

(16) **ACKNOWLEDGMENTS:** The role of DCR must be clearly stated in all press releases, news articles, requests for proposals, bid solicitations and other documents describing this project, whether funded in whole or in part. Acknowledgment of financial assistance, with the DCR logo, must be printed on the cover of all reports, studies, web sites, map products or other products supported by this award or any sub-award. The grantee is responsible for contacting DCR staff in adequate time to obtain the logo in camera-ready or digital form. Prior to production, DCR project management staff must approve the final draft. The acknowledgment should read:

This project received funding from the Virginia Water Quality Improvement Fund provided by the Department of Conservation and Recreation (DCR), via grant number WQIA-2007-##.

(17) **DISCLAIMER:** For reports or papers produced for public distribution (including the final product), the following sentence must be added to the end of the above credit: *The views expressed herein are those of the author(s) and do not necessarily reflect the views of DCR.*

IN WITNESS THEREOF the parties have caused the Agreement to be executed by the following duly authorized officials:

Grantee:

**Grantor: Virginia Department of Conservation
and Recreation**

By: _____

By: _____

Title: _____

Jack E. Frye, Director
Title: Division of Soil and Water Conservation

Date: _____

Date: _____

By: _____

Joseph H. Maroon, Director
Title: Department of Conservation and Recreation

Date: _____

COMMONWEALTH OF VIRGINIA TERMS AND CONDITIONS

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- A. **APPLICABLE LAWS AND COURTS:** This grant agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the grantee are encouraged to resolve any issues in controversy arising from the award of the grant using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). The grantee shall comply with all applicable federal, state and local laws, rules and regulations.
- B. **ANTI-DISCRIMINATION:** By accepting a grant award, project sponsors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the grant on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every grant award over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this grant, the grantee (contractor) agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such organization is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- 2. The grantee will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- C. **AUDIT:** The grantee shall retain all books, records, and other documents relative to this grant agreement for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- D. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this grant agreement.
- E. **AWARD OF GRANT:** Selection shall be made of project sponsors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the solicitation. Negotiations may be conducted with the project sponsors so selected, as deemed necessary. Price shall be considered, but need not be the sole determining factor. The Commonwealth may cancel solicitations or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D).
- F. **CHANGES TO GRANT AGREEMENT:** Changes can be made to the grant agreement in the following ways:
 - 1. The parties may agree in writing to modify the scope of the grant agreement. An increase or decrease in the price of the grant resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the grant agreement.
 - 2. The granting agency may order changes within the general scope of the grant agreement at any time by written notice to the grantee. Changes within the scope of the grant agreement include, but are not limited to, things such as services to be performed and the place of delivery or installation. The grantee shall comply with the notice upon receipt. The grantee shall notify the granting agency, in advance, if additional costs may be incurred as the result of such order and shall give the granting agency a credit for any savings. Said compensation shall be determined by mutual agreement between the parties in writing.
- G. **ETHICS IN PUBLIC CONTRACTING:** By accepting a grant award, grantees certify that their proposal was made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other project sponsor, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS:** Failure to submit a proposal on the official state application form and following proposal submission guidelines provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject such a proposal.
- I. **NONDISCRIMINATION OF PROJECT SPONSOR:** Project sponsors shall not be discriminated against in the solicitation or award of grants under this program because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment.
- J. **PAYMENT:** Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice is submitted. [*The Attachment B included with this Agreement, completed and signed, services as the project invoice.*] A grantee awarded a grant under this program is hereby obligated: (1) To pay the subcontractor(s) within seven (7) days of the grantee's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the grant; or (2) To notify the agency and the subcontractor(s), in writing, of the grantee's intention to withhold payment and the reason.
- K. **QUALIFICATIONS OF PROJECT SPONSORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the project sponsor to perform the services and the project sponsor shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such project sponsor fails to satisfy the Commonwealth that such project sponsor is properly qualified to carry out the obligations of the proposal and to provide the services and/or furnish the goods contemplated therein.
- L. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test / inspection it may deem advisable to assure goods and services conform to specifications.
- M. **RENEWAL OF GRANT AGREEMENT:** This grant agreement may be renewed by the Commonwealth for successive funding periods under the terms and conditions of the original agreement. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each agreement period.
- N. **SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES SUBCONTRACTING:** Where it is practicable for any portion of the awarded grant to be subcontracted to other suppliers, the contractor is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses.